IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 5483 & 5596 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

VIJAYBHAI DHURALAL SONI

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Misc. Appln. No. 5483 of 2000
MR YATIN SONI for Petitioner
MR KG SHETH, Learned APP for Respondent No. 1

2. Criminal Misc. Appln. No. 5596 of 2000
MR BS PATEL, for Petitioner
MR KG SHETH, Learned APP for Respondent no.1

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 10/10/2000

COMMON JUDGEMENT

1. These are two petitions filed by two petitioners abovenamed for quashing F.I.R. filed before the Saiyajiganj Police Station, Vadodara vide I C.R. No. 8 of 1998 for offences punishable under Sections 489 (A) (B) and (C), 120 B and 114 of the Indian Penal Code. The matters were filed and ultimately, the matter at present are pending before the Sessions Court being Sessions Case No. 108 of 1998.

2. The petitioners abovenamed have submitted that there is no material against them and the Court could not legally proceed against the petitioners. Therefore, they pray for quashing and setting aside the aforesaid case against them.

3. On receipt of the petitions, rule was issued. Mr. K.G.Sheth, learned APP appears for State. I have heard learned advocates for the parties and have perused the papers.

4. It has been argued on behalf of the petitioners that except bare statement of co-accused, there is no other material on record before the Trial Court to proceed against the present petitioners and, therefore, these petitions are required to be allowed and the petitioners are required to be exonerated from the aforesaid sessions case no. 108 of 1998.

5. On going through the police papers, Mr. K.G.Sheth, learned APP states that there is no material against present petitioners at present except the statement of co-accused. It is also his case that some accused are still absconding. It may be that on their arrest further material may be made available to the prosecuting agency as well as investigating agency against the present petitioners. But at present there is no material against the present petitioners except the statement of co-accused.

6. It is well settled that the statement made by co-accused cannot be used against the present petitioners. Therefore, it is clear that there is no material against the present petitioners with the prosecuting agency to prosecute the petitioners. In that

case, even charge cannot be framed against them. When there is no material against the present petitioners, there is no need for them to appear before the Trial Court and to face the trial. At the same time, if during the course of further investigation, particularly, when the absconding accused persons are apprehended and any material is made available to the investigating agency as well as prosecuting agency, then it may be open to the prosecution to implead the present petitioners again and in that event, the investigating agency may file fresh charge sheet or supplementary charge sheet against the present petitioners. When there is no material at present and when the charge sheet has been filed and material is already pending in the Sessions Court, then in that event, petitions are required to be allowed and the aforesaid Sessions Case qua the petitioners is required to be quashed.

7. With the aforesaid observations, these two petitions are allowed and Sessions Case No. 108 of 1998 before the Additional Sessions Judge, Vadodara is quashed and set aside qua the aforesaid petitioners only. The Sessions Court, Vadodara will be at liberty to proceed further against the remaining accused persons according to law. Rule is made absolute. Direct service is permitted.

(D.P.Buch,J)
(vipul)